

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

GHAZI ABU NAHL, et al.,

v.

GEORGES ZARD ABOU JAOUDE, et al.,

15-cv-09755 (LGS)

Declaration of Dr. Michael Rubin

I. Qualifications

1. My name is Dr. Michael Rubin. I am a resident scholar at the American Enterprise Institute, a private, non-profit academic and public policy think tank in Washington, DC, where I focus on terrorism and Middle Eastern politics, including Hezbollah and Lebanon. My CV is attached as Exhibit A.

2. Previously, I was a country director for Iraq and Iran in the Office of the Secretary of Defense at the Department of Defense, and was seconded to be a political advisor to the Coalition Provisional Authority (CPA) in Baghdad, Iraq. At the CPA, my job was to roam the country—outside the confines and security of the Green Zone—in order to compare developments in different regions and document growing Iranian influence and the presence of Hezbollah. I have testified in Congress a number of times, including before the House Financial Services Committee and House Oversight Committee on related issues.

3. My research and writing have focused on issues relating to terrorism, security,

diplomacy with ‘rogue regimes,’ and financial impropriety, much of which is relevant to the subject matter of this report. I regularly teach classes with regard to Hezbollah, Lebanese politics, and the Islamic Revolutionary Guard Corps’ business empire for both the FBI and US military.

4. I have traveled to Lebanon several times, most recently in May 2017. I met with Saad Hariri, prime minister; Gebran Bassil, foreign minister; and other officials from across the Lebanese political spectrum, including some sympathetic to or aligned with Hezbollah. I also met with Riyad Salameh, governor of the Central Bank.

II. Background on Hezbollah

5. The United States has long considered Hezbollah to be a terrorist group. It was officially designated as such on October 8, 1997.¹ In 2002, Canada likewise designated Hezbollah to be a terrorist entity.² In 2016, the six members of the Gulf Cooperation Council designated Hezbollah to be a terrorist group.³ Many European countries designate Hezbollah’s military arm as a terrorist entity, because of Hezbollah’s history of attacks that violate international law.

6. Early examples of Hezbollah’s terrorism include the seizure of more than 30 Western hostages in the years after the kidnapping of Davis S. Dodge, president of the American University of Beirut in 1982. In April 1983, the group detonated a car bomb at the U.S. Embassy in Beirut, killing 17 American citizens. Six months later, the group attacked the barracks of U.S. Marines serving a peace-keepers in Lebanon, killing 241. The following year, Hezbollah gunmen shot and killed Malcolm H. Kerr, Dodge’s successor at the American University of Beirut. In April 1984, Hezbollah operatives bombed a restaurant near the U.S. Air Force Base in Torrejón, Spain, killing

¹ Office of the Coordinator for Counterterrorism, Department of State, “Designation of Foreign Terrorist Organizations; Notice” Federal Register, Vol. 62, No. 195, October 8, 1997.

² “Currently Listed Entities,” Public Safety Canada, <https://www.publicsafety.gc.ca/cnt/ntnl-scrtr/cntr-trrrsm/lstd-ntts/crrnt-lstd-ntts-en.aspx#2027>

³ “GCC declares Lebanon’s Hezbollah a ‘terrorist’ group,” Al Jazeera, March 2, 2016, <http://www.aljazeera.com/news/2016/03/gcc-declares-lebanon-hezbollah-terrorist-group-160302090712744.html>

18 U.S. servicemen. Hezbollah was also responsible for the kidnapping and murder of William F. Buckley, the CIA station chief in Beirut, and Col. William Higgins, a U.S. Marine serving with the United Nations in Lebanon. On June 14, 1985, Hezbollah terrorists hijacked TWA flight 847.

7. Hezbollah is also guilty of indiscriminate rocket attacks on Israeli population centers. Hezbollah attacks have continued to the present day, against Israelis, Americans, and otherwise. On January 15, 2008, a Hezbollah bomb damaged a U.S. diplomatic vehicle in Beirut, killing three and wounding 16.⁴ In 2012, Hezbollah bombed a tourist bus in Bulgaria, killing seven. Hezbollah also planned bomb attacks in Azerbaijan, Georgia, and India. Hezbollah has been actively involved in the Syrian civil war serving as a mercenary force for both Syrian President Bashar al-Assad and Iran's Islamic Revolutionary Guard Corps.⁵ In the wake of the outbreak of civil war in Syria, Hezbollah has also acted as "muscle" for Syrian President Bashar al-Assad's regime and has repeatedly engaged in crimes against humanity, for example, by conducting summary executions of civilians.⁶

8. To conduct these attacks, Hezbollah has built up a stockpile of weaponry. The 1989 Taif Agreement which ended the Lebanese civil war called on all militias to disarm and disband.⁷ Hezbollah refused.⁸ Iran is Hezbollah's chief supplier of weaponry.

9. While Iran provides Hezbollah with seed money and emergency cash, it also demands that Hezbollah fund its operations in a variety of ways. Hezbollah has long used operatives outside

⁴ Tom Perry, "Beirut bomb hits U.S. Embassy Car," Reuters, January 15, 2008.

⁵ Marisa Sullivan, "Hezbollah in Syria," Institute for the Study of War, April 2014.

⁶ Michael J. Totten, "Hezbollah's War Crimes," *World Affairs Journal*, October 15, 2013; Shlomo Bolts & Mohammed A. Ghanem "'They Burned Everything': Iran, Hezbollah, and War Crimes in Syria," *The Tower*, April-May 2017.

⁷ "The Taif Agreement," United Nations, ratified by Lebanese Parliament, November 4, 1989. https://www.un.int/lebanon/sites/www.un.../the_taif_agreement_english_version_.pdf

⁸ See UN Security Council Resolutions 1559 (2004), 1680 (2006), and 1701 (2006) (demanded that the Lebanese government implement fully the Taif Agreement and exert full control over its territory rather than defer any control to Hezbollah).

of Lebanon and among the Lebanese Diaspora community to engage in money laundering and criminal activities, the proceeds of which are used to support Hezbollah activities and terrorism. For example, in January 1999, the U.S. Secret Service uncovered a Hezbollah fundraising scheme which was, at the time, the largest credit card fraud operation ever uncovered in the United States.⁹ Then, in 2000, the U.S. Department of Justice indicted 18 people in North Carolina in a separate cigarette smuggling scheme to benefit Hezbollah; all the suspects were found guilty and a 30-year sentence was imposed on ringleader Mohamad Hammoud.¹⁰ In 2003, the government busted another U.S.-based Hezbollah cigarette smuggling and counterfeit tax stamp scheme.¹¹

10. In the wake of these prosecutions, Hezbollah grew more sophisticated and further internationalized some of its financing and money laundering schemes which transited the United States. In March 2006, the U.S. government indicted Imad Hammoud for a vast criminal drug and document counterfeiting conspiracy to enrich Hezbollah that touched California, Florida, Georgia, Illinois, Kentucky, Michigan, Missouri, New York, and West Virginia, and also other countries including Lebanon.¹² Subsequent Hezbollah enrichment schemes involved mortgage fraud and convoluted and illegal means to move money to Hezbollah cells operating internationally and in Lebanon.¹³ The scheme to sell American used cars in West Africa and divert some of the proceeds to Hezbollah, as alleged in this case, fits a pattern. The United States estimates that Hezbollah collects more than \$1 billion per year from drugs and weapons trafficking, money laundering, and

⁹ Matthew Levitt, *Hezbollah: The Global Footprint of Lebanon's Party of God*. (Washington, DC: Georgetown University Press, 2013), p. 317.

¹⁰ "18 Accused of Cigarette Smuggling to Fund Hezbollah," Associated Press, July 22, 2000, <http://articles.latimes.com/2000/jul/22/news/mn-57451> ; "FBI: Cigarette-Smugglers Funded Terrorism," ABC News, July 22, 2000, <http://abcnews.go.com/US/story?id=96402&page=1>

¹¹ "Mich. man charged with terrorism ties," Associated Press, January 16, 2004, http://www.nbcnews.com/id/3968125/ns/us_news-security/t/mich-man-charged-terrorism-ties/#.WkmNXTdrzIU

¹² Levitt, op. cit, pp. 323-325.

¹³ United States of America vs. Mahmoud Youssef Kourani, United States District Court, Eastern District of Michigan, Indictment, November 19, 2003, news.findlaw.com/cnn/docs/terrorism/uskourani111903ind.pdf

other criminal activity. In 2008, the Drug Enforcement Agency launched an operation called Project Cassandra to undercut these operations.¹⁴ There was significant overlap between the U.S. case against the Lebanese Canadian Bank and Project Cassandra. The investigation into money laundering at the Lebanese Canadian Bank reportedly shed light on Hezbollah financial schemes and more of the group's money laundering and diversion schemes, including the dispatch of couriers carrying the proceeds of Hezbollah's drug smuggling.¹⁵

III. History of the Iran-Hezbollah in Lebanon

11. Since 2006, Hezbollah has essentially been the dominant force in Lebanese politics. Hezbollah successfully leveraged its disruptive ability into real power when Secretary of State Condoleezza Rice, among others, acquiesced to the Doha Accord, which allocated Hezbollah sufficient seats in Lebanon's cabinet to give the group a permanent veto. In exchange, Hezbollah militias withdrew to their strongholds.¹⁶ This power allowed Hezbollah to prevent serious Lebanese reform or investigation. Hezbollah could do so as a minority stakeholder, giving it the legitimacy associated with being a political party, but without accountability as the official ruling party.

12. Hezbollah uses its permanent veto and other influence in Lebanon to protect itself and its allies. Hezbollah has not hesitated to use its leverage. In 2011, Hezbollah forced the resignation of Prime Minister Saad Hariri's government after he pledged to cooperate with the Special Tribunal for Lebanon's investigation into the 2005 assassination of his father, former Prime Minister Rafiq Hariri, an event in which investigators suspected a Hezbollah role. Hezbollah

¹⁴ Josh Meyer, "The secret backstory of how Obama let Hezbollah off the hook," *Politico*, December 17, 2017, <https://www.politico.com/interactives/2017/obama-hezbollah-drug-trafficking-investigation/>

¹⁵ *Ibid.*

¹⁶ Robert Worth and Nada Bakri, "Deal for Lebanese Factions Leaves Hezbollah Stronger," *New York Times*, May 22, 2008, <http://www.nytimes.com/2008/05/22/world/middleeast/22lebanon.html>

pressure also forced Hariri's successor, Prime Minister Najib Mikati, to leave office in March 2013.¹⁷ On October 31, 2016, Michel Aoun, a Christian long aligned with Hezbollah, assumed the presidency, further consolidating Hezbollah influence within the Lebanese government.

13. In short, Hezbollah has significant influence and effective veto power in every aspect of Lebanese politics and the Lebanese government more broadly. This influence extends to technocratic and professional bodies. In a May 2017 meeting at the Central Bank, Mr. Salameh walked out of a bipartisan meeting when asked to address safeguards and issues relating to Hezbollah infiltration of the Lebanese banking sector. Hezbollah's influence has also grown within the Lebanese Armed Forces (LAF). In a society riven by sectarianism, Lebanese across the political and sectarian spectrum have long cited the LAF as the one national institution which has moved successfully beyond sectarianism. In recent years, however, Hezbollah has also moved to infiltrate and co-opt the LAF. The U.S. Congress has reconsidered military aid provided to the LAF because of real, substantiated concerns that Hezbollah has grown so strong and influential inside Lebanon that assistance provided to the LAF could fall into the hands of Hezbollah or Iran. In December 2016, the Israel Defense Force reported that Hezbollah has used M-60 tanks and M-113 APCs which the United States had provided to Lebanon as part of a military aid package for the LAF.¹⁸ There are also credible reports that LAF and Hezbollah coordinate and have cooperated in operations.¹⁹

IV. Problems in the Lebanese Judiciary

¹⁷ Babak Dehghanpisheh, "Lebanon's prime minister steps down amid political dispute with Hezbollah," *Washington Post*, March 22, 2013.

¹⁸ Anshel Pfeffer, "Hezbollah Fighting in Syria With U.S. Weapons Supplied to Lebanese Army, IDF Says," *Haaretz*, December 21, 2016.

¹⁹ "U.S. Policy toward Lebanon," Hearing before the Subcommittee on the Middle East and North Africa of the Committee on Foreign Affairs, U.S. House of Representatives, October 11, 2017.

14. While many European laws inspired Lebanese law, the Lebanese judiciary also makes many concessions to Lebanon's religious and sectarian communities.²⁰ Although the judiciary is theoretically independent of the other branches of government, in practice it is closely tied to Lebanon's political branches. In 2004, the U.S. State Department reported, "The Constitution provides for an independent judiciary; however, in practice, it was subject to political pressure. Syrian military and Lebanese and Palestinian militias, particularly Hizballah, retained significant influence over much of the country. . . . influential politicians as well as Syrian and Lebanese intelligence officers at times intervened and protected their supporters from prosecution."²¹ Hezbollah's grip over Lebanese politics is now stronger than it was in 2004. The US Agency for International Development states that "Achieving greater independence for the judiciary is vital for the development of democracy and rule of law in Lebanon."²²

15. The political branches appoint judges in Lebanon in a manner which undercuts judicial independence.²³ As the Arab Center for the Rule of Law explained, "In effect, the executive authority has actual authority over the administrative and functional aspects of the judicial authority."²⁴ Lebanon's Constitutional Board, for example, in theory acts as an independent branch of the judiciary and has primacy over constitutional interpretation of laws and settlement of conflicts emerging from elections. Because half of its members are appointed by parliament and the other half by government, Hezbollah's ability to influence or filibuster gives it disproportionate influence over this nominally independent body. Hezbollah politicians regularly use their influence

²⁰ Elias Chalhoub (Anwar Frangi, trans.), "The Report of the State of the Judiciary in Lebanon," The Arab Center for the Rule of Law and The International Foundation for Election Systems, January 2004, p. 3.

²¹ "Lebanon," 2004 Country Reports on Human Rights Practices, Bureau of Democracy, Human Rights, and Labor, U.S. Department of State, February 28, 2005, <https://www.state.gov/j/drl/rls/hrrpt/2004/41726.htm>

²² "Strengthening the Independence of the Judiciary and Citizen Access to Justice in Lebanon," US Agency for International Development, Final Report December 12, 2007 – December 9, 2010

²³ Judiciary Law, art. 26, 31, 100-01; State Consultative Counsel Regs., art. 5 Chalhoub, op.cit, p. 14.

²⁴ Chalhoub, op.cit, p. 15.

to appoint loyal judges. Both Lebanese trial courts and Lebanese appellate courts are likewise susceptible to Hezbollah influence.

16. In addition, because many judges receive appointment to higher office, they may be susceptible to influence. Salim Jreissati, for example, began his career as a judge and was a member of the Lebanese Constitutional Council between 1977 and 2009. He advised four Hezbollah operatives suspected in the assassination of former Prime Minister Rafik Hariri. It may have been this history, as well as his membership in the Free Patriotic Movement, President Michel Aoun's party, that led Aoun, to appoint Jreissati to his current position as Minister of Justice. Jreissati's ties to one of Hezbollah's chief patrons inside Lebanon raises serious questions about whether the Lebanese judiciary would be capable of impartiality in any case regarding Hezbollah.

17. The U.S. State Department believes that the Lebanese judiciary is corrupt. According to the State Department's 2016 Country Reports on Human Rights, "Influential politicians and intelligence officers intervened at times and used their influence and connections to protect supporters from prosecution. Persons involved in routine civil and criminal proceedings sometimes solicited the assistance of prominent individuals to influence the outcome of their cases."²⁵ In practice, Lebanon's Code of Judicial Ethics is not enforced. Although Lebanese judges can be prosecuted for corruption, this seldom happens.

18. One example of bias in the Lebanese Judiciary relates to the Rafik Hariri assassination. On February 14, 2005, a huge bomb killed former Lebanese Prime Minister Rafik Hariri in Beirut. Hariri had vocally opposed Syrian (and Iranian) attempts to grant Lebanon's pro-Syrian President an extra-constitutional third term. Syrian President Bashar al-Assad had reportedly threatened

²⁵ "Lebanon," 2016 Country Reports on Human Rights Practices, Bureau of Democracy, Human Rights, and Labor, U.S. Department of State, March 3, 2017, <https://www.state.gov/j/drl/rls/hrrpt/2016/nea/265508.htm>

Hariri. A few months before the Hariri's murder, Assad reportedly made a death threat to Hariri.²⁶ Following the assassination, United Nations created a Special Tribunal for Lebanon presided over by 11 judges appointed by the United Nations Secretary-General. On January 17, 2011, the Special Tribunal issued indictments against four Hezbollah members. Hezbollah Secretary-General Hassan Nasrallah vowed that he would not allow the government to arrest the suspects.²⁷ And, indeed, even without a sympathetic president or pliable prime minister, Nasrallah and members of Hezbollah succeeded in shielding the suspects from arrest. Importantly, the Tribunal based itself largely outside Lebanon to minimize security threats and undue influence upon its personnel given the fact that its investigations were targeting Hezbollah and its allies.

V. Claims raised by Nest Investments

19. Nest Investments is making direct allegations against Hezbollah, which concern both its crimes against humanity and its criminal financing sources. Any ruling in Nest's favor would necessarily be critical of Hezbollah. Because the allegations touch upon issues and actions which Hezbollah consider to be secret or a security matter, Hezbollah could leverage its connections to the Lebanese president, justice minister, or other authorities to sidetrack any court hearing through a variety of means, overt or covert.

20. Budgetary issues and financing of groups like Hezbollah which engage in terrorism are especially sensitive to the group. After a U.S. court found that Iran sponsored a terrorist attack in which an American was killed and based damages on Iran's official budget, Iranian authorities quickly scrubbed such numbers from their public budget.²⁸ Any exposure of Hezbollah's true

²⁶ Neil MacFarquhar, "A threat in Damascus; later, a bomb in Beirut," *New York Times*, March 22, 2005, <http://www.nytimes.com/2005/03/22/world/africa/a-threat-in-damascus-later-a-bomb-in-beirut.html>

²⁷ "Hezbollah leader Nasrallah rejects Hariri indictments," BBC.com, July 3, 2011, <http://www.bbc.com/news/world-middle-east-14004096>

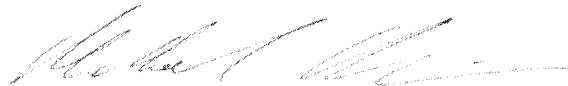
²⁸ United States Court of Appeals, District of Columbia Circuit. Stephen M. FLATOW, Individually and as Administrator of the Estate of Alisa Michelle Flatow, deceased, Appellant, v. ISLAMIC REPUBLIC OF IRAN, The Ministry of Foreign Affairs, et al., Appellees. No. 01-7101 & 01-7149. Decided: October 08, 2002.

budget or income in a Lebanese court would have greater political ramifications as it would end the illusion which Hezbollah tries to maintain that it is a normal political group. Ensuring that no Lebanese court could receive evidence that would become public would be a Hezbollah priority and a priority for its various sponsors in Lebanon and abroad. Accordingly, as a practical matter, plaintiffs could not get a fair hearing on its claims in Lebanon.

VI. Conclusions

21. Hezbollah, a U.S.-designated terrorist group, dominates the political infrastructure of Lebanon. This includes the Lebanese judiciary. The group has significant influence over judicial decisions and has demonstrated an ability to derail open judicial inquiry into itself and its members. At present, it is impossible for allegations against Hezbollah to be decided impartially in Lebanon. Nest's complaint raises allegations against Hezbollah and thus could not be fairly and impartially adjudicated in Lebanon.

Pursuant to 28 U.S.C. § 1746 and under penalty of perjury, I declare that the foregoing is true and correct to the best of my knowledge and belief.



Michael Rubin